

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA.

Case No. 3:22-cr-030-ART-CLB

Plaintiff,

Order on Petition for Forfeited Assets,  
ECF No. 35

LEONARDO DELGADO

Defendant,

JORGE ALVAREZ

Petitioner.

## I. SUMMARY

Before the Court is a Petition for Forfeited Assets (ECF No. 35) filed by Petitioner Jorge Alvarez to secure the return of his desktop computer that was seized in connection with Case 3:22-cr-030-ART-CLB. The Government filed a Motion to dismiss the Petition. (ECF No. 40.) Because the Court agrees with the Government that it lacks subject matter jurisdiction, the Court will dismiss the Petition.

## **II. BACKGROUND**

Alvarez alleges the following. He purchased the desktop, an ASUS Model GL10DH, Serial Number: CCPDKW00073853C, on April 3, 2021. (ECF No. 35 at 1.) The computer was seized during a search in connection with Case 3:22-cr-030-ART-CLB, and he is now seeking its return. (*Id.*) The Government responded that the Court lacks subject matter jurisdiction because Alvarez chose to file a Petition for Remission or Mitigation, which is an administrative petition, instead of a Petition for Ancillary Hearing. (ECF No. 40 at 3-4.)

1           **III. LEGAL STANDARD**

2           Neither party can forfeit or waive subject matter jurisdiction. *Ashcroft v. Iqbal*,  
 3       556 U.S. 662, 671 (2009). “If the court determines at any time that it lacks  
 4       subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12  
 5       (h) (3); *see also Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004)  
 6       (the court is obligated consider sua sponte whether it has subject matter  
 7       jurisdiction). The plaintiff bears the burden of proving by a preponderance of the  
 8       evidence that subject matter jurisdiction exists. *San Diego Cnty. Credit Union v.*  
 9       *Citizens Equity First Credit Union*, 65 F.4th 1012, 1028-29 (9th Cir. 2023) (citing  
 10      *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014)).

11          A party may challenge subject matter jurisdiction by filing a 12(b)(1) motion.  
 12       See Fed. R. Civ. P. 12(b)(1). This attack “may be facial or factual.” *Safe Air for*  
 13       *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing *White v. Lee*, 227  
 14       F.3d 1214, 1242 (9th Cir. 2000)). “In a facial attack, the challenger asserts that  
 15       the allegations contained in a complaint are insufficient on their face to invoke  
 16       federal jurisdiction. By contrast, in a factual attack, the challenger disputes the  
 17       truth of the allegations that, by themselves, would otherwise invoke federal  
 18       jurisdiction.” *Id.* “Ordinarily, where a jurisdictional issue is separable from the  
 19       merits of a case, the court may determine jurisdiction by the standards of a Rule  
 20       12(b)(1) motion to dismiss for lack of jurisdiction.” *Roberts v. Corrothers*, 812 F.2d  
 21       1173, 1177 (9th Cir. 1987).

22           **IV. DISCUSSION**

23          Third parties have two options for recovering forfeited property. If the party  
 24       wants a judicial hearing, he or she must file a Petition for Ancillary Hearing within  
 25       thirty days of the final publication of notice or his receipt of notice, whichever is  
 26       earlier. 21 U.S.C. § 853(n)(3). The third party petitioner can instead file a Petition  
 27       for Remission or Mitigation within thirty days of receiving notice for  
 28       administrative resolution of the forfeiture. 39 C.F.R. § 9.3(a).

1        This court lacks subject matter jurisdiction because Alvarez did not properly  
2 invoke this Court's jurisdiction. Alvarez filed a Petition for Remission or Mitigation  
3 instead of a Petition for Ancillary Hearing. (ECF No. 35.) Thus, this Court cannot  
4 consider Alvarez's petition, and he must wait for administrative resolution of his  
5 petition.

6        **V. CONCLUSION**

7        It is therefore ordered that Petitioner's Petition for Forfeited Assets (ECF No.  
8 35) is dismissed and the Government's motion to dismiss the petition (ECF No.  
9 40) is granted.

10

11

DATED THIS 5<sup>th</sup> day of December 2023.

12

13



14

---

15        ANNE R. TRAUM  
16        UNITED STATES DISTRICT JUDGE

17

18

19

20

21

22

23

24

25

26

27

28